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APR 23 2007

OFFICE OF PETITIONS

In re Application of :
Sharp et al. :
Application No. 09/779,379 : ON PETITION
Filed: 7 February, 2001 :
For: AIR QUALITY MONITORING :
SYSTEMS AND METHODS :

This is a decision on the paper styled under 37 CFR 1.137(a), filed on 18 January, 2007, which, in the absence of a fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.¹

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" or as described within, under 37 CFR 1.137(a) or (b). This is not a final agency action.

This application became abandoned on 14 October, 2006, for failure to file a timely and proper reply to the Corrected Notice of Allowance and Fee(s) Due mailed on 13 July, 2006, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 5 December, 2006.

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.² The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.³

¹ In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

² See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

³ MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

Petitioners assert that a proper reply was timely filed. Specifically, petitioners assert that the issue and publication fees were paid on 21 March, 2006.

The showing of record has been considered, but is not persuasive. While petitioners submitted a response on 21 March, 2006, to the Notice of Allowance mailed on 23 December, 2005, no response was submitted in response to the Corrected Notice of Allowance mailed on 13 July, 2006.

Specifically, the Corrected Notice mailed on 13 July, 2006, stated, in pertinent part that "THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS BEEN PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE."

As such, a response was clearly required to the Corrected Notice of Allowance mailed on 13 July, 2006. Since no response was timely filed, application was properly held abandoned, and the petition must be dismissed.

ALTERNATIVE VENUE

Alternatively, petitioner may wish to consider filing a petition under 37 CFR 1.137(b), which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after 8 June, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
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By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Mail Stop Petition
 Randolph Building
 401 Dulany Street
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Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.


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